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OFFICE OF PETITIONS

In re Application of	:	
Walker et al.	:	DECISION ON APPLICATION
Application No. 10/729,439	:	FOR PATENT TERM ADJUSTMENT
Filed: December 5, 2003	:	
Attorney Docket No. 3718582-00305	:	

This is in response to the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. § 1.705(b)" filed August 25, 2010. Applicants request that the initial determination of patent term adjustment be corrected from eight hundred seventy-seven (877) days to seven hundred forty-nine (749) days.

The instant application for patent term adjustment is **granted to the extent indicated herein**.

The Office has updated the PALM screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is 652 days. A copy of the updated PALM screen, showing the correct determination, is enclosed.

The Office issued a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) on June 8, 2010, advising Applicants of a patent term adjustment to date of 877 days. In response, applicants timely filed this application for patent term adjustment with payment of the issue fee on August 25, 2010.

Applicants state the correct patent term adjustment is 749 days.

Issue 1

The Office issued a final Office action on March 17, 2009. The Office failed to receive a response to the Office action or a request for an extension of time. As a result, the application became abandoned on June 18, 2009.

A petition under 37 C.F.R. § 1.137(b) was filed October 23, 2009.

Applicants assert the Office should have entered a 128-day reduction for the 128-day period beginning June 18, 2009, the date of abandonment, and ending October 23, 2009, the date a petition to revive was filed, is 128 days.

Pursuant to 37 C.F.R. § 1.704(c)(3), circumstances that will result in a reduction in the period of adjustment include the abandonment of the application. Therefore, the Office agrees a reduction in patent term adjustment is proper as a result of the abandonment of the instant application. The Office also agrees the period of reduction in patent term adjustment begins on the date of abandonment. However, the Office does not agree the period of reduction in patent term adjustment ends when a petition to revive the application is filed.

The proper reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(3) is the number of days beginning on the date of abandonment and ending on the earlier of:

- (1) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or
- (2) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed.

The Office issued a decision granting the petition under 37 C.F.R. § 1.137(b) on January 4, 2010, less than four months after the filing date of the petition.

The period of reduction in patent term adjustment under 37 C.F.R. § 1.704(c)(3) is 201 days, which is the number of days beginning on June 18, 2009, the date of abandonment, and ending on January 4, 2010, the date the Office issued a decision reviving the application.

Issue 2

The patent term adjustment determination of 877 days mailed June 8, 2010, included a 24-day increase in patent term adjustment under 37 C.F.R. § 1.703(a)(2).

A review of the record indicates a 24-day reduction in patent term adjustment is not warranted under 37 C.F.R. § 1.703(a)(2).

Pursuant to 37 C.F.R. § 1.703(a)(2), the period of adjustment under 37 C.F.R. § 1.702(a) includes:

The number of days, if any, in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

The Office entered a 24-day increase in patent term adjustment as a result of the Office issuing an Office action four months and 24 days after Applicants filed a RCE and an amendment on October 23, 2009, with the petition under 37 C.F.R. § 1.137(b). However, since the application was abandoned at the time the reply was filed and an Office action was filed within four months

of the date of revival, an increase in patent term adjustment 37 C.F.R. § 1.703(a)(2), is not warranted.

Conclusion

In view of the prior discussion, the proper patent term adjustment is 652 days, which is 914 days of Office delay under 37 C.F.R. § 1.703(a)(1) reduced by 262 (201 + 61) days of delay under 37 C.F.R. § 1.704.

Submission of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fee is required.

Applicants are reminded that any delays by the Office pursuant to 37 C.F.R. §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 C.F.R. § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles S. Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM screen



Patent Term Adjustments



PTA/PTE Information Patent Term Adjustment Patent Term Extension

Application Number*: 10729439 Search Explanation of PTA Calculation Explanation of PTE Calculation

PTA Calculations for Application: 10729439

Application Filing Date	12/05/2003	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	938
A Delays	938	PTO Manual Adjustment	-225
B Delays	0	Applicant Delay (APPL)	61
C Delays	0	Total PTA (days)	652

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
96	01/04/2011		P028	Adjustment of PTA Calculation by PTO		225	0
86	06/08/2010		MN/=	Mail Notice of Allowance			0
85	05/12/2010		IREV	Issue Revision Completed			0
84	05/12/2010		DVER	Document Verification			0
83	05/12/2010		N/=	Notice of Allowance Data Verification Completed			0
82	05/10/2010		CNTA	Notice of Allowability			0
76	04/29/2010		FWDX	Date Forwarded to Examiner			0
75	04/16/2010		A...	Response after Non-Final Action			0
74	03/19/2010		ELC_RVW	Electronic Review			0
73	03/19/2010		EML_NTF	Email Notification			0
72	03/19/2010	02/23/2010	MCTNF	Mail Non-Final Rejection	24		67
71	03/15/2010		CTNF	Non-Final Rejection			0
70	01/12/2010		FWDX	Date Forwarded to Examiner			0
68	01/12/2010		FWDX	Date Forwarded to Examiner			0
66	01/12/2010		ABN9	Disposal for a RCE / CPA / R129			0
63	01/08/2010		EML_NTR	Email Notification			0
65	01/04/2010		MNRAB	Mail Notice of Rescinded Abandonment			0
62	01/04/2010		MPREV	Mail-Petition to Revive Application - Granted			0
64	12/31/2009		NRAB	Notice of Rescinded Abandonment in TCs			0
61	12/31/2009		PREV	Petition to Revive Application - Granted			0
60	12/04/2009		EML_NTR	Email Notification			0
59	12/04/2009		PA...	Change in Power of Attorney (May Include Associate POA)			0
58	11/27/2009		C.AD	Correspondence Address Change			0
69	10/23/2009		AMSB	Amendment Submitted/Entered with Filing of CPA/RCE			0
67	10/23/2009		RCEX	Request for Continued Examination (RCE)			0
57	10/23/2009		PET	Petition Entered			0
56	10/23/2009		BRCE	Workflow - Request for RCE - Begin			0
55	09/28/2009		MABN2	Mail Abandonment for Failure to Respond to Office Action			0
54	09/25/2009		ABN2	Aband. for Failure to Respond to O. A.			0
53	03/17/2009		MCTFR	Mail Final Rejection (PTOL - 326)			0
52	03/15/2009		CTFR	Final Rejection			0
51	12/16/2008		FWDX	Date Forwarded to Examiner			0
50	11/18/2008	09/18/2008	A...	Response after Non-Final Action		61	48
49	11/18/2008		XT/G	Request for Extension of Time - Granted			0
48	06/18/2008		MCTNF	Mail Non-Final Rejection			0
47	06/13/2008		CTNF	Non-Final Rejection			0
44	04/09/2008		FWDX	Date Forwarded to Examiner			0
42	04/09/2008		ABN9	Disposal for a RCE / CPA / R129			0
46	04/07/2008		IDSC	Information Disclosure Statement considered			0
45	04/07/2008		MB44	Information Disclosure Statement (IDS) Filed			0
43	04/07/2008		RCEX	Request for Continued Examination (RCE)			0
41	04/07/2008		WIDS	Information Disclosure Statement (IDS) Filed			0
40	04/07/2008		BRCE	Workflow - Request for RCE - Begin			0
39	02/22/2008		FIDC	Finished Initial Data Capture			0
38	01/11/2008		EIDC	Export to Initial Data Capture			0
37	01/07/2008		MN/=	Mail Notice of Allowance			0
36	01/04/2008		IREV	Issue Revision Completed			0
35	01/04/2008		N/=	Notice of Allowance Data Verification Completed			0
34	01/04/2008		DVER	Document Verification			0
33	01/04/2008		CNTA	Notice of Allowability			0
30	11/16/2007		P574	Paralegal TD Accepted			0
29	11/15/2007		FWDX	Date Forwarded to Examiner			0
28	11/08/2007		A...	Response after Non-Final Action			0
27	11/08/2007		C604	Substitute Specification Filed			0
26	08/08/2007	02/05/2005	MCTNF	Mail Non-Final Rejection	914		-1

25	08/06/2007	CTNF	Non-Final Rejection	0
22	02/05/2007	DOCK	Case Docketed to Examiner in GAU	0
21	04/30/2006	TSSCOMP	IFW TSS Processing by Tech Center Complete	0
16	09/09/2005	WROIPE	Application Return from OIPE	0
15	09/09/2005	COMP	Application Is Now Complete	0
20	06/08/2005	A.PE	Preliminary Amendment	0
14	06/08/2005	ADDFLFE	Additional Application Filing Fees	0
13	06/08/2005	OSPECNFD	Omitted Specification Pages. Applicant has Petitioned that the Filing Date not be changed and the P	0
12	05/17/2005	OMIT	Notice of Omitted Items	0
10	03/25/2004	W/OA	Pre-Exam Office Action Withdrawn	0
9	03/25/2004	ROIPE	Application Return TO OIPE	0
8	03/25/2004	WROIPE	Application Return from OIPE	0
7	03/25/2004	ROIPE	Application Return TO OIPE	0
5	03/25/2004	COMP	Application Is Now Complete	0
6	03/24/2004	OIPE	Application Dispatched from OIPE	0
4	01/12/2004	L194	Cleared by OIPE CSR	0
3	01/12/2004	CLSS	CASE CLASSIFIED BY OIPE	0
2	01/07/2004	SCAN	IFW Scan & PACR Auto Security Review	0
24	12/05/2003	IDSC	Information Disclosure Statement considered	0
19	12/05/2003	RCAP	Reference capture on IDS	0
18.7	12/05/2003	MB44	Information Disclosure Statement (IDS) Filed	0
18	12/05/2003	WIDS	Information Disclosure Statement (IDS) Filed	0
17	12/05/2003	A.PE	Preliminary Amendment	0
1	12/05/2003	IEXX	Initial Exam Team nn	0

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